

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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WILLIAM MISIEWICZ,

Case No. 2:22-cv-01180-RFB-NJK

Plaintiff,

**ORDER**

v.

NEVADA DEPARTMENT OF  
CORRECTIONS, *et al.*,

Defendants.

Plaintiff William Misiewicz brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. ECF No. 6. On August 21, 2023, this Court issued a screening order dismissing the complaint without prejudice and with leave to amend within 60 days. ECF No. 12. The Court warned Misiewicz that the action could be dismissed if he failed to file an amended complaint by that deadline. *Id.* at 11. That deadline expired and Misiewicz did not file an amended complaint, or otherwise respond to the Court's order.

**I. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
2 cases on their merits; and (5) the availability of less drastic alternatives. See In re  
3 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone,  
4 833 F.2d at 130).

5 The first two factors, the public's interest in expeditiously resolving this litigation and the  
6 Court's interest in managing its docket, weigh in favor of dismissal of Misiewicz's claims. The  
7 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a  
8 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered  
9 by the court or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976).  
10 The fourth factor—the public policy favoring disposition of cases on their merits—is greatly  
11 outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can be used  
13 to correct the party's failure that brought about the Court's need to consider dismissal. See Yourish  
14 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic  
15 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord  
16 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive  
17 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives  
18 prior to disobedience of the court's order as satisfying this element[,]” i.e., like the “initial granting  
19 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been  
20 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally  
21 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,  
22 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and  
23 unless Misiewicz files an amended complaint, the only alternative is to enter a second order setting  
24 another deadline. But the reality of repeating an ignored order is that it often only delays the  
25 inevitable and squanders the Court's finite resources. The circumstances here do not indicate that  
26 this case will be an exception: there is no hint that Misiewicz needs additional time or evidence  
27 that he did not receive the Court's order. Setting another deadline is not a meaningful alternative  
28 given these circumstances. So the fifth factor favors dismissal.

**II. CONCLUSION**

Having thoroughly considered these dismissal factors, the Court finds that they weigh in favor of dismissal.

IT IS THEREFORE ORDERED that this action is dismissed without prejudice based on Misiewicz's failure to file an amended complaint in compliance with this Court's August 21, 2023, order. The Clerk of Court is directed to enter judgment accordingly and close this case. No other documents may be filed in this now-closed case. If Misiewicz wishes to pursue his claims, he must file a complaint in a new case.

IT IS FURTHER ORDERED that Misiewicz's application to proceed *in forma pauperis* (ECF No. 8) is denied as moot.

IT IS FURTHER ORDERED that Misiewicz may move to reopen this case and vacate the judgment by filing a motion for reconsideration of this order. In this motion, Misiewicz is required to explain what circumstances delayed him from paying the filing fee or filing the application to proceed in forma pauperis. If the Court finds there to be good cause or a reasonable explanation therein, the Court will reopen the case and vacate the judgment.

DATED: January 19, 2024.



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RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE